SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE ) Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employes and Missouri-Kansas-Texas Railroad Company

QUESTIONS AT ISSUE:

(1) Did B. L. Carr qualify as a protected employe under the provisions of Article I, Section I, of the February 7, 1965 Agreement?

(2) Did the carrier violate the provisions of the February 7, 1965 Agreement, particularly Article I, Section I, when it failed to return B. L. Carr, Stower-Crane Operator, San Antonio, Texas, to compensated service on or before March 1, 1965 and continues to refuse to return him to such service?

(3) Did the carrier violate the provisions of Article I, Section 3 when it refused to restore B. L. Carr to active service, on the basis that it had suffered a decline in business without first restoring him to active service and thereafter giving the employes affected five (5) days notice of reduction in forces as required by the current schedule agreement?

(4) If the answers to questions 1, 2 and 3 are in the affirmative is B. L. Carr now due the difference between what he earned as an extra man and the normal rate of compensation of the position be held on October 1, 1964 (plus subsequent wage increases) in accordance with Article IV, Section I during the entire period March 1, to and including December 31, 1965?

(5) If the answers to questions 1 and 2 are in the affirmative and the answer to question 3 is in the negative is B. L. Carr entitled to the difference in what he earned and the average monthly compensation of the position he held on October 1, 1964, (plus subsequent wage increases) during such months when the average of both the gross operating revenue and net revenue ton miles of the carrier did not fall below 5% over the corresponding months in the base years 1963 and 1964?

OPINION OF BOARD:

On October 1, 1964,Claimant was regularly assigned to Stower-Crane Operator position at San Antonio. In addition, he had two or more years of an employment relationship, as well as fifteen or more days of compensated service during 1964. On this basis, the Organization contends that Claimant is a protected employee pursuant to Article I, Section I, of the February 7, 1965 National Agreement.

The Carrier, however, argues that he did not qualify as a protected employee inasmuch as Claimant was displaced on October 9, 1964, by a senior employee, whose job was abolished. The Carrier, therefore, insists that Claimant lost his protected status due to his failure to perform any service during the months of November and December, 1964. Admittedly, at the time that Claimant was furloughed, he filed his name and address in accordance with the rules and indicated his availability for all extra work.

The Carrier stresses that under the November 24, 1965 Interpretations - - as explained in approximately fourteen pages of its submission - - a protected employee loses his protection if he fails to work an average of seven days during each of the months in which he is furloughed. In fact, it chides the Organization as follows: "but no where in its ex parte submission, has the Organization contended that Carrier's position with respect to the agreed interpretation is in error. This amounts to a tacit agreement that the Carrier's position is correct."

We would simply refer the Carrier to Award No. 14, dated December 19, 1967, the pertinent portion of which provides as follows:

> "The mere fact that he was furloughed on November 30, 1964 and performed no further service until March 15, 1965 does not place him in a different category than any other employee in active service who worked continously after October 1, 1964. He was not a furloughed employee on October 1, 1964."
> Also see Award Nos. 99 and 127.

The second defense relied on by the Carrier is based on that portion of Article I, Section 3, permitting it to reduce its forces in the event of a decline in business in excess of 5% pursuant to the formula contained therein. Inasmuch as the Claimant had previously been furloughed in October, 1964 - - and not returned to active service on or before March 1, 1965 - - it could refrain from recalling him during those months in 1965, due to said decline in business.

The Organization counters, of course, with that portion of Article I, Section 3, which provides that,"(A)dvance notice of any such force reduction shall be given as required by the current Schedule Agreements - - ." On the property, Rule 17 of the effective Agreement, provides that not less than five working days advance notice be given in reduction of forces or abolishment of positions. Thus, the thrust of the Organization's argument herein is directed at the failure of the Carrier to give advance notice.

Are the requirements of the February 7, 1965 National Agreement mere rhetoric? What is the significance of Article I, Section 1, wherein it is said, " - - - such employees who are on furlough as of the date of this Agreement will be returned to active service before March 1, 1965 - - - "? What is the significance of Article I, Section 3, wherein it is stated that, "(A)dvance notice of any such force reduction shall be given - - - "? (Underline added).

In seeking answers to these questions, we quote from Page 5, of the Carrier's Submission:

> "In the interpretation of contracts it is not to be assumed that the parties thereto have included therein language that is mere surplusage and has no meaning. On the other hand, it is to be assumed that the parties ascribed a definite meaning to the language used by them, otherwise different language, or no language at all, would have been used."

We could not have expressed this thought any clearer nor more accurately. We wholeheartedly concur. Predicated on our analysis, we find that the Carrier failed to restore Claimant to active service prior to March 1, 1965. We further find that the Carrier has failed to give the required notice pursuant to Article I, Section 3.

AWARD

The answer to Questions (1), (2), (3) and (4) is in the affirmative.

Murray M. Rohman
Neutral Member

Dated: Washington, D. C.
April 20, 1970